APPENDIX A

SUPREME COURT OF SOUTH CAROLINA

No. 25758

DORIS STIEGLITZ WARD, individually and on behalf of all others similarly situated,

Appellants,

v.

STATE OF SOUTH CAROLINA,

Respondent.

Heard Sept. 25, 2003
Decided Dec. 8, 2003

Justice Burnett:

Appellant Doris Stieglitz Ward brings this direct appeal on behalf of a class of federal retirees challenging the circuit court's decision upholding the constitutionality of Act 189, 1989 Acts 623 (Act 189). Federal retirees claim that South Carolina discriminates in taxation between state and federal retirees in violation of the federal constitutional and statutory intergovernmental tax immunity doctrine. For the following reasons, we affirm the judgment of the circuit court.

ISSUE

Did the circuit court err in holding that Act 189 does not violate the intergovernmental tax immunity doctrine now codified in 4 U.S.C. § 111 (1997)[1] and is therefore constitutional?

[1] That Section provides in relevant part, "The United States consents to the taxation of pay or compensation for personal service as an officer or employee of the United States . . . by a duly constituted taxing authority having jurisdiction, if the taxation does not discriminate against the officer or employee because of the source of the pay or compensation."

DISCUSSION

Statutes are to be construed in favor of constitutionality, and this Court will presume a legislative act is constitutional, unless its repugnance to the Constitution is clear and beyond a reasonable doubt. *Main v. Thomason*, 342 S.C. 79, 86, 535 S.E.2d 918, 921 (2000).

The South Carolina General Assembly enacted Act 189 to comply with the United States Supreme Court decision in *Davis v. Michigan Dept't of Treasury*, 489 U.S. 803, 109 S.Ct. 1500, 103 L.Ed.2d 891 (1989). In *Davis*, the Supreme Court held that the Michigan Income Tax Act violated the doctrine of intergovernmental tax immunity by favoring retired state and local government employees over retired federal employees. The Michigan statute exempted retirement benefits paid by state and local governments from state income taxes without exempting retirement benefits paid by the federal government from state income taxes. The Supreme Court stated, "It is undisputed that Michigan's tax system discriminates in favor of retired state employees and against retired federal employees." *Id.* at 814, 109 S.Ct. at 1507, 103 L.Ed.2d at 904.

To resolve the unconstitutional taxation provision, the Supreme Court declared that a mandate of "equal treatment" would remedy the constitutional infirmity in the Michigan statute. The Supreme Court stated:

> [A]ppellant's claim could be resolved either by extending the tax exemption to retired federal employees (or to all retired employees), or by eliminating the exemption for retired state and local government employees. * * * [T]he Michigan courts are in the best position to determine how to comply with the mandate of equal treatment.

Id. at 818, 109 S.Ct. at 1509, 103 L.Ed.2d at 907.

Prior to *Davis*, South Carolina exempted all state retirement benefits from income taxation, but only exempted the first $3,000 of federal retirement benefits. Act 189, § 39 repealed the tax exemption for state retirement benefits, thereby rendering all federal and state retirement benefits in excess of $3,000 taxable. In addition to repealing the tax exemption, the General Assembly simultaneously increased retirement benefits for state and local retirees by 7%. Act 189, § 60. This increase in benefits is provided to all state retirees, regardless of their tax liability. The State does not dispute that the General Assembly increased retirement benefits to compensate state retirees, in part, for their increased income tax obligations resulting from the enactment of Act 189.

Federal retirees contend that Act 189 is unconstitutional because the State continues to discriminate against federal retirees by increasing the pension benefits paid to state and local retirees in an effort to offset the increased tax liability resulting from the exemption. In other words, federal retirees argue that the State has indirectly recast the pre-*Davis* discriminatory exemption through the 7% increase in benefits for state retirees. We disagree. For the following reasons, we conclude Act 189 is not, in effect, a "tax rebate" that implicates the intergovernmental tax immunity doctrine.

First, the doctrine of intergovernmental tax immunity does not deprive a state of its sovereignty to establish the level of its employees' compensation as long as the State does not discriminate in taxation based on the source of the income. The Tenth Amendment provides, "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people." U.S. Const. amend X. To determine if a statute violates the Tenth Amendment, we must first determine whether the regulation it embodies is within those enumerated in the Constitution. Second, we must determine whether the regulation employed impermissibly infringes upon state

sovereignty. *United States v. Johnson*, 114 F.3d 476, 480 (4th Cir.1997) *referring to New York v. United States*, 505 U.S. 144, 156, 112 S.Ct. 2408, 2418, 120 L.Ed.2d 120, 137 (1992). The power to compensate state retirees is clearly not delegated to the United States by the Constitution. As long as federal and state retirees are taxed equally, any restriction on this authority would violate the Tenth Amendment.

Second, in enacting Act 189, the General Assembly specifically followed the dictate of *Davis* by eliminating the tax exemption for both state and federal employees. In doing so, the General Assembly was guided by the remedies suggested by the Supreme Court. In direct response to *Davis*, the General Assembly amended South Carolina's tax statute to remove the tax exemption for state retirees. Act 189 conformed South Carolina to the requirements of the *Davis* decision.

Federal retirees argue the "indisputable linkage" between the increase in compensation and the tax exemption renders Act 189 unconstitutional under *Davis*. They argue that the Court must consider substance over form in evaluating the constitutionality of Act 189. *See West Lynn Creamery, Inc. v. Healy*, 512 U.S. 186, 201, 114 S.Ct. 2205, 2215, 129 L.Ed.2d 157, 171 (1994) (holding in a dormant Commerce Clause case, that it is not the form by which a state discriminates, but whether the means employed will result in discrimination). We do not believe *Davis* holds, or otherwise implies, that states may only raise retirement benefits for its state's retirees if the pension increase in no way serves to offset a prior tax exemption. Even if the elimination of the tax exemption for state retirees and the simultaneous increase in benefits are read together, the doctrine of intergovernmental tax immunity is not violated. South Carolina has specifically followed the remedy prescribed by *Davis*. Therefore, federal retirees' argument is unavailing.

Third, neither *Davis* nor 4 U.S.C. § 111 prohibit the State from contracting with its retirees on the level of compensation paid to its retirees. The intergovernmental tax immunity doctrine serves to protect each sovereign's governmental operations from undue interference from the other. *Davis*, 489 U.S. at 814, 109 S.Ct. at 1507, 103 L.Ed.2d at 904. *Davis* does not hold, nor does it even suggest, that a state is prohibited from adjusting the compensation of its employees, even if the state's purpose is to compensate its employees for the loss of the income tax exemption. A state is entitled to raise the level of taxable compensation of its employees if it so chooses. *Davis* requires that the state *tax* federal and state retirees equally and does not concern itself with the manner in which a state chooses to *compensate* its retirees.

The Supreme Court implicitly recognized that a state's response to the Court's decision could be to increase compensation to state retirees to offset what those retirees lost in benefits as a result of being taxed. In his dissenting opinion, Justice Stevens stated:

> Even if it were appropriate to determine the discriminatory nature of a tax system by comparing the treatment of federal employees with the treatment of another discrete group of persons, it is peculiarly inappropriate to focus solely on the treatment of state governmental employees. *The state may always compensate in pay or salary for what it assesses in taxes.* Thus a special tax imposed only on federal and state employees nonetheless may reflect the type of disparate treatment that the intergovernmental tax immunity forbids because of the ability of the State to adjust any special tax burden on them . . . It trivializes the Supremacy Clause to interpret it as prohibiting the States

> from providing through this limited tax exemption *what the state has an unquestionable right to provide through increased retirement benefits.*

489 U.S. at 824, 109 S.Ct. at 1512, 103 L.Ed.2d at 910-911. (emphasis added).

Although the majority disagreed with the first sentence in the above passage, they took no issue with a state's ability to lawfully increase the benefits paid to state retirees to offset the effect of the Court's holding. South Carolina's increase is the type of response to *Davis* specifically contemplated by the Supreme Court. The doctrine of intergovernmental tax immunity does not apply because there is no discrimination in taxation on account of the source of compensation.

Fourth, we find no direct correlation between state retirees' state tax obligations and the amount of increased retirement benefits. All eligible state retirees receive the 7% increase in retirement benefits. Act 189 resulted in an increase in compensation for state retirees, and was not a dollar for dollar offset. Moreover, the increased benefits are subject to both state and federal taxation. In *Davis*, the majority stated, "[t]axes enacted to reduce the State's employment costs at the expense of the federal treasury are the type of discriminatory legislation that the doctrine of intergovernmental tax immunity is intended to bar." *Davis*, 489 U.S. at 815, 109 S.Ct. at 1507, 103 L.Ed.2d at 905. The General Assembly's increase in retirement actually increased the employment costs for South Carolina, while simultaneously bolstering the federal treasury.

Federal retirees rely on *Sheehy v. Public Employees Retirement Div.*, 262 Mont. 129, 864 P.2d 762 (1993) and *Vogl v. Dep't of Revenue*, 327 Or. 193, 960 P.2d 373 (1998). In *Sheehy*, federal retirees challenged Montana's 1991 statute enacted in response to *Davis*. Before *Davis*, Montana, like South Carolina, taxed federal retirement benefits but ex-

empted state retirement benefits. The Montana statute restructured the income tax on pension benefits by equalizing the taxation of all pension benefits. In the same act, the Montana legislature granted to state retirees who were Montana residents, and who were now to be taxed in response to *Davis*, an annual retirement adjustment payment. *Sheehy*, 864 P.2d at 764. The Montana Supreme Court held that the Montana statute violated the intergovernmental tax immunity provision of 4 U.S.C. § 111. The court stated,

> It is clear that the adjustment is not an actual and legitimate pension or retirement benefit. If it were a pension benefit, the State would have provided it to all of its retirees in recognition of their years of public service rather than just those living in Montana. There was no need to do so because the sole purpose of the adjustment was to partially recompense state retirees living in Montana for the tax they must pay under the equalizing provisions of [the Montana law].

864 P.2d at 768.

Federal retirees argue that South Carolina's Act 189, like the Montana statute, constitutes discriminatory taxation in violation of intergovernmental tax immunity principles. We disagree. In reaching their decision, the Montana Supreme Court relied heavily on the fact the adjustment was provided only to state retirees who are Montana residents. South Carolina's statute is distinguishable. Act 189 provides the increase to all state retirees, regardless of their domicile.

The Oregon statute considered by the Oregon Supreme Court in *Vogl* is also distinguishable from Act 189. The 1995 Oregon statute explicitly stated that its purpose was to compensate for damages. Furthermore, the benefit increases under the 1995 statute were mathematically correlated to replace the lost state retirement income. South Carolina's General Assembly did not tie the pension benefit increase,

dollar for dollar, to the lost tax exemption, nor did it declare that Act 189 was designed to compensate state retirees for damages. South Carolina's Act 189 is analogous to the 1991 statute considered by the Oregon Supreme Court in *Ragsdale v. Dep't of Revenue*, 321 Or. 216, 895 P.2d 1348 (1995). In 1991, the Oregon legislature repealed the tax exemption for state retirees and simultaneously increased the benefits for state retirees.[2] Like Act 189, Oregon's 1991 act provided no direct correlation between the increase in benefits for state retirees and their tax obligations. *Id.* at 1350.

Federal retirees have failed to show beyond a reasonable doubt that Act 189 is clearly repugnant to the Constitution. Accordingly, we affirm.

AFFIRMED.

WALLER, A.C.J., and Acting Justices H. SAMUEL STILWELL, WILLIAM L. HOWARD and J. MARK HAYES, concur.

---

[2] A Virginia statute, recently considered by a Virginia circuit court, is also similar to Act 189. In *Almeter v. Virginia Department of Taxation*, 2000 WL 1687589 (Va. Cir. Ct. Nov.6, 2000), *petition denied, cert. denied*, 534 U.S. 889, 122 S.Ct. 202, 151 L.Ed.2d 143 (2001), federal retirees brought a class action seeking a refund of state income taxes that they alleged were illegally collected from them following that state's 3% increase in retirement benefits for its state's retirees. Like the present case, federal retirees alleged that the 3% increase was designed to offset the new tax liability incurred by state retirees and therefore violated the intergovernmental tax immunity doctrine. The Virginia circuit court dismissed the federal retirees' claims in holding that the increase in benefits was a remedy specifically envisioned by the Supreme Court in *Davis*.

APPENDIX B

IN THE COURT OF COMMON PLEAS
STATE OF SOUTH CAROLINA
County of Richland

[Filed Sept. 17, 2002]

C.A. No. 98-CP-40-4069

DORIS STIEGLITZ WARD, individually and on behalf of all other similarly situated,

Plaintiffs,

v.

STATE OF SOUTH CAROLINA,

Defendant.

ORDER DENYING PLAINTIFFS' MOTION TO ALTER OR AMEND JUDGMENT

Pursuant to Rule 59(e), SCRCP, Plaintiffs have moved the Court to alter or amend the judgment set forth in the Court's August 26, 2002 Order. The Court has reviewed Plaintiffs' motion and finds no basis for altering or amending its judgment.

IT IS SO ORDERED.

/s/ L. Casey Manning
THE HONORABLE L. CASEY MANNING
Circuit Judge, Fifth Judicial Circuit

Columbia, South Carolina

September 17, 2002

APPENDIX C

IN THE COURT OF COMMON PLEAS
STATE OF SOUTH CAROLINA
County of Richland

[Filed Aug. 26, 2002]

C.A. No. 98-CP-40-4069A

DORIS STIEGLITZ WARD, individually and on behalf of all other similarly situated,

Plaintiffs,

v.

STATE OF SOUTH CAROLINA,

Defendant.

ORDER

In this challenge to South Carolina's taxation of retirement income under Act No. 189 of 1989, Plaintiff, for herself and on behalf of a class of federal retirees, seeks a declaration that Act 189 is unconstitutional. Defendant State of South Carolina ("the State") has moved for summary judgment, seeking a declaration that Act 189 is constitutionally valid and that Plaintiffs three constitutional claims should be dismissed. Plaintiff[1] has moved for partial summary judgment, seeking a declaration that Act 189 is unconstitutional on the ground that it violates the intergovernmental tax immunity doctrine. After reviewing the parties' written submissions, as well as hearing oral argument, the Court has concluded that the State's motion for summary judgment

---

[1] For simplicity's sake, this Order refers to "Plaintiff," with the understanding that Plaintiff has brought this suit as a class action on behalf of federal retirees.

should be granted, and Plaintiffs motion for partial summary judgment should be denied.

FACTUAL/PROCEDURAL BACKGROUND

In 1989, the United States Supreme Court held that states could not exempt state retirement benefits from state income taxation and not provide a like exemption for federal retirement benefits. *Davis v. Michigan Dep't of Treasury*, 489 U.S. 803 (1989). Prior to *Davis*, South Carolina exempted all state retirement benefits from income taxation, but only exempted the first $3,000 of other retirement benefits (including federal benefits). To comply with *Davis*, in 1989, the South Carolina General Assembly passed Act 189, which repealed South Carolina's exemption from taxation of state retirement benefits. The result was that *all* federal and state retirement benefits in excess of $3,000 became taxable. The Legislature simultaneously increased state retirement benefits by 7%.

Some nine years after Act 189's passage, Doris Ward, a federal retiree, commenced this action on behalf of all other federal retirees, contending that the Legislature's repeal of the total exemption from income taxation and its simultaneous enactment of an increase in state retirement benefits violated her rights because these actions resulted in, what she characterizes as, an unlawful "tax rebate" to state retirees. Plaintiff maintains that federal retirees are entitled to a refund of state income taxes paid on their retirement benefits. Although Plaintiff has not specified the amount of damages she is seeking on behalf of all federal retirees, she does not dispute that the damages sought total several hundred million dollars. She also seeks a permanent injunction enjoining further taxation of federal retirees' retirement benefits in excess of $3,000. Plaintiff's amended complaint alleges a statutory violation of 4 U.S.C. § 111 and constitutional

violations of the intergovernmental tax immunity doctrine, the takings clause, and equal protection.

In September 1999, the Honorable Alison Lee dismissed Plaintiff's action for failure to exhaust administrative remedies. In November 2000, the South Carolina Supreme Court overturned the dismissal, reasoning that the sole issue in the case was the determination of Act 189's constitutionality, which could only be made by a court, not an agency or an administrative law judge. *Ward v. State*, 343 S.C. 14, 538 S.E.2d 245 (2000). That issue is now before this Court on cross motions for summary judgment.

LAW/ANALYSIS

I. Legal Standard for Declaring Statute Unconstitutional

Plaintiff bears a very heavy burden in attempting to prove that Act 189 is unconstitutional. The Supreme Court has declared that "[a]ll statutes are presumed constitutional and will, if possible, be construed so as to render them valid." *Last v. MSI Constr. Co.*, 305 S.C. 349, 352, 409 S.E.2d 334, 336 (1991). Recently, the state Supreme Court again underscored the very high standard for declaring a statute unconstitutional: "A legislative enactment will be declared unconstitutional only when its invalidity appears *so clearly as to leave no room for reasonable doubt* that it violates some provision of the Constitution." *Main v. Thomason,* 342 S.C. 79, 86, 535 S.E.2d 918, 921 (2000) (emphasis added). For the reasons set forth below, the Court concludes that Plaintiff cannot meet this standard on any of her three claims.

II. Intergovernmental Tax Immunity Claim

Plaintiff argues that Act 189 is unconstitutional under the intergovernmental tax immunity doctrine, which prohibits discriminatory taxation.[2] As explained below, Plaintiff's

[2] Plaintiff has separately pled the violation of 4 U.S.C. § 111, which provides in relevant part: "The United States consents to the taxation of

argument is inconsistent with the binding decisions of the United States and South Carolina Supreme Courts, as well as persuasive authority from other courts. Thus, the Court finds that Plaintiff cannot prove the invalidity of Act 189 "so clearly as to leave no room for reasonable doubt." *See Thomason*, 342 S.C. at 86, 535 S.E.2d at 921.

A. The United States Supreme Court's *Davis* Decision

The starting point for determining the constitutional validity of Act 189 is the United States Supreme Court's decision in *Davis v. Michigan Department of Treasury*, 489 U.S. 803. In *Davis*, the Supreme Court struck down a Michigan statute on the basis of the intergovernmental tax immunity doctrine. The statute in question fully taxed all federal retirement benefits, but excluded from taxable income retirement benefits received from the state of Michigan. The Supreme Court held that Michigan could not discriminate between state and federal retirement benefits in taxing, based on "the source" of the benefits. *Id.* at 817. When *Davis* was decided, Michigan and 22 other states, including South Carolina, gave such preferential treatment to state and local employees. *Davis* offered guidance on how the situation could be remedied: "either by extending the tax exemption to retired federal employees . . . or by eliminating the exemption

---

pay or compensation for personal service as an officer or employee of the United States . . . by a duly constituted taxing authority having jurisdiction, if the taxation does not discriminate against the officer or employee because of the source of the pay or compensation." Case law holds that 4 U.S.C. § 111 codifies the constitutional doctrine of intergovernmental tax immunity. Thus, the analysis is the same under the Constitution and 4 U.S.C. § 111. *See Davis*, 489 U.S. at 813-14 ("[T]he retention of immunity in § 111 is coextensive with the prohibition against discriminatory taxes embodied in the modern constitutional doctrine of intergovernmental tax immunity. . . . [T]he scope of the immunity granted or retained by the nondiscrimination clause [in § 111] is to be determined by reference to the constitutional doctrine.").

for retired state and local government employees." *Id.* at 818; *see Evans v. State*, 344 S.C. 60, 543 S.E.2d 547 (2001). South Carolina chose the latter option. It enacted Act 189, which eliminated the tax exemption for retired state and local government employees. Because South Carolina complied with the very guidance provided in *Davis*, Act 189 is constitutionally valid. The United States Supreme Court would obviously not have suggested an unconstitutional solution.

Plaintiff, however, criticizes South Carolina's choice. She alleges that because in addition to eliminating the tax exemption for state retirees, the State also gave its retirees a 7% increase in retirement benefits, such an increase constitutes a prohibited "tax rebate," which violates the intergovernmental tax immunity doctrine.[3]

For several major reasons, Plaintiff's argument is without merit. First, as discussed above, *Davis* provided states with two options for eliminating discriminatory taxation of federal and state retirees. A state could tax federal and state retirees alike, or it could tax neither. South Carolina chose to tax federal and state retirees alike. *Davis* did not place any

---

[3] Plaintiff characterizes the 7% increase in retirement benefits as a "tax rebate"; however, the Court finds this characterization is inappropriate for two reasons. First, there has been no showing that state retirees have ever received anything resembling a "tax rebate." There has been no contention that state retirees have received a check rebating them taxes they have paid. Nor has there been any showing that state retirees have been allowed to take a credit on their tax returns to make up for the elimination of their former tax exemption. Thus, state retirees have not received a rebate in any sense of the word. Second, the increase in retirement benefits (coupled with the elimination of the tax exemption on retirement benefits) cannot be characterized as a "tax rebate" because there was no precise correlation between the increase in benefits and the taxes paid by state retirees. Under Act 189, the increase in state retirement benefits was not married to the amount of taxes that a state retiree paid, but rather all retirees received the same 7% increase in benefits. Many state retirees received the additional benefits, but have not paid any additional taxes.

limitations on how a state could tax all retirees, as long as they were taxed in the same manner. Plaintiff is attempting to write into the *Davis* decision the additional condition that a state is prohibited from increasing the retirement benefits of its own retirees. Such a condition does not appear in *Davis*. Under Plaintiff's theory, *any* post-*Davis* increase in state retirement benefits would be subject to challenge under the intergovernmental tax immunity doctrine and 4 U.S.C. § 111. Nothing in *Davis* supports Plaintiff's view that the United States Supreme Court intended by that decision to regulate what states could pay to their retirees.

Second, close examination of Plaintiff's argument reveals that she has confused the concepts of *taxation* and *take-home income*. When her argument is scrutinized, it becomes clear that Plaintiff is not, in fact, asserting that Act 189 has a discriminatory effect on taxation; rather, she is claiming that Act 189 has a discriminatory effect on take-home income. Indeed, it is undisputed that South Carolina taxes federal and state retirees at exactly the same rates. Plaintiff is contending that because Act 189 repealed the tax exemption previously available to state retires, but simultaneously increased retirement benefits by 7% (with the result that state retirees' take-home income is essentially the same as it was prior to Act 189), then South Carolina must be discriminating in their favor and against federal retirees. This argument is meritless as it is inconsistent with *Davis*. Contrary to Plaintiff's premise, *Davis* was not concerned with discriminatory state action in relation to take-home income, but rather with taxation. *Davis* did not deal with the take-home income of state retirees vis-á-vis federal retirees, but rather with discriminatory state action in regards to taxation of state and federal retirement income based on the source of their income. This is confirmed by review of *Davis* and subsequent cases. *Davis* speaks of the intergovernmental *tax* immunity doctrine, not of an inter-governmental *take-home income* immunity doctrine, which, of course, does not exist. Four years after *Davis* was

decided, the Supreme Court summarized the holding of *Davis*: "In *Davis* . . ., we held that a State violates the constitutional doctrine of intergovernmental tax immunity when it *taxes* retirement benefits paid by the Federal Government *but exempts from taxation* all retirement benefits paid by the State or its political subdivisions." *Harper v. Virginia Dep't of Taxation*, 509 U.S. 86, 89 (1993) (emphasis added). Clearly, *Davis* prohibits only discriminatory taxation or exemption from taxation; it does not prohibit differences in take-home income between state and federal retirees.

Third, the possibility of a state increasing the compensation of its employees or retirees to make up for the lost tax exemption was even envisioned, and impliedly approved, by *Davis,* as long as the compensation did not result in a depleting of the federal treasury. In arguing that Michigan's exemption of taxation of state retirees should be upheld, the dissent in *Davis* had stated that it was "peculiarly inappropriate to focus solely on the treatment of state governmental employees" because "[t]he State may always compensate in pay or salary for what it assesses in taxes." *Davis*, 489 U.S. at 824 (Stevens, J., dissenting). The majority took issue with this argument. Importantly, however, the majority was not concerned with *whether* a state could "compensate in pay or salary for what it assesses in taxes," but rather *how* it did so. *See Davis*, 489 U.S. at 815 n.4; *see also Almeter v. Virginia Dep't of Taxation*, 2000 WL 1687589 (Va. Cir. Ct. 2000) ("[T]he majority [in *Davis*] took no issue with a state's ability to lawfully increase the benefits paid to state retirees to offset the effect of the Court's holding . . . ."), *petition denied*, (Va. 2001), *cert. denied*, 2001 WL 872690 (U.S. Oct. 1, 2001). The *Davis* majority highlighted that the critical question is whether such a scheme (*i.e.*, increasing retirement benefits to offset loss of state

tax exemption) would have a negative effect on the federal treasury:

> In order to provide the same after-tax benefits to all retired state employees by means of increased salaries or benefit payments instead of a tax exemption, [Michigan] would have to increase its outlays by more than the cost of the current tax exemption, since the increased payments to retirees would result in higher federal income tax payments in some circumstances. This fact serves to illustrate the impact on the Federal Government of [Michigan's] discriminatory tax exemption for state retirees. *Taxes enacted to reduce [Michigan's] employment costs at the expense of the federal treasury are the type of discriminatory legislation that the doctrine of intergovernmental tax immunity is intended to bar.*

Davis, 489 U.S. at 815 n.4 (internal citation omitted) (emphasis added). Thus, the Supreme Court was clear that "the type of discriminatory legislation that the doctrine of intergovernmental tax immunity is intended to bar" is that which reduces a state's employment costs "at the expense of the federal treasury." *Id.* By granting a tax exemption rather than increasing the salaries or benefits of state employees, a state may, in effect, be cheating the federal government. The scheme enacted by South Carolina's Act 189 is not "the type of discriminatory legislation that the doctrine of intergovernmental tax immunity is intended to bar" because it does not "reduce the State's employment costs at the expense of the federal treasury." *Id.* On the contrary, through Act 189's 7% increase in retirement benefits, South Carolina has voluntarily *increased* its employment costs, while at the same time *bolstering* the federal treasury. Act 189 results in state retirees having to pay *more* federal income tax because the income on which their federal tax is assessed has increased. Consequently, by eliminating the exemption for state retirees and providing the benefits increase, South Carolina is adding to, not taking away from, the federal treasury. Therefore, Act

189 does not create the type of scheme that was of concern to the *Davis* Court.

Fourth, that Act 189 is consistent with *Davis* is supported by the South Carolina Supreme Court's own interpretation of *Davis*. Recently, the South Carolina Supreme Court interpreted *Davis* as follows:

> In *Davis* . . ., the United States Supreme Court held the doctrine of intergovernmental immunity and 4 U.S.C. § 111 (1997) prohibit the states from taxing federal government retirees at a *greater rate* than state and local government retirees are taxed.

Evans v. State, 344 S.C. 60, 63, 543 S.E.2d 547, 548 (2001) (emphasis added). A review of Act 189 makes clear that the Act does not tax federal government retirees at a "greater rate" than state retirees. All retirees, including federal and state, are taxed at precisely the same rate. Therefore, the state Supreme Court's own interpretation of *Davis* indicates that Act 189 is constitutionally valid.

Thus, all of the above reasons clearly indicate that Act 189 does not violate the intergovernmental tax immunity doctrine of the Constitution and 4 U.S.C. § 111. Nevertheless, Plaintiff insists that she has conclusively demonstrated a violation of the intergovernmental tax immunity doctrine because Act 189 "linked" the elimination of the full tax exemption for state retirees with the 7% increase in their retirement benefits. The Court rejects this argument.

Plaintiff's "linkage" argument is essentially a non-sequitur. Simply because the elimination of the tax exemption may have been "linked" to the increase in retirement benefits does not logically or legally lead to the conclusion that Act 189 violated the intergovernmental tax immunity doctrine. There is nothing in the intergovernmental tax immunity doctrine, as expounded in *Davis* and other Supreme Court decisions, that supports Plaintiff's argument. As the authorities cited above

clearly demonstrate, the focus of this doctrine is on discriminatory *taxation*. That Act 189 may have linked or not linked the elimination of a tax exemption with an increase in retirement benefits has absolutely no bearing on the claim that Plaintiff has asserted. Accordingly, Plaintiff has not established a violation of the intergovernmental tax immunity doctrine. Because Act 189 is constitutionally valid, the Court grants summary judgment to the State.

B. Persuasive Authority from Other Courts

The decisions of other courts also powerfully support a finding that Act 189 is constitutionally valid. The most recent decision on the question held that federal retirees, asserting claims nearly identical to those by Plaintiff in this case, did not have a cause of action. In *Almeter v. Virginia Department of Taxation*, 2000 WL 1687589 (Va. Cir. Ct. Nov. 6, 2000), *petition denied,* (Va. 2001), *cert. denied,* 2001 WL 872690 (U.S. Oct. 1, 2001), federal retirees sought a refund of state income taxes "illegally and unconstitutionally collected from them" and "a declaration that a 3% 'Tax Rebate'" contained in a post-*Davis* Virginia statute violated the federal and state constitutions. More specifically, the federal retirees alleged that the state's increase of retirement allowance by 3% for state retirees violated the intergovernmental tax immunity doctrine under 4 U.S.C. § 111, as this was an "attempt to give state retirees the same benefits they had before *Davis* and, thus, avoid *Davis*' holding." *Almeter*, 2000 WL 1687589. The *Almeter* Court summarily dismissed the federal retirees' claims. *Almeter*, which cannot be meaningfully distinguished from the current case, unequivocally points to the rejection of Plaintiff's claim here.

That South Carolina's Act 189 is constitutionally valid also finds compelling support in an *en banc* decision of the Supreme Court of Oregon, which squarely held that a scheme similar to South Carolina's did not violate the

intergovernmental tax immunity doctrine. *Ragsdale v. Department of Revenue*, 895 P.2d 1348 (Or. 1995)(en banc). In response to *Davis*, the Oregon legislature, like South Carolina's, repealed the tax exemption for state retirees. At the same time, Oregon increased state retirement benefits. Federal retirees brought a lawsuit asserting that the legislature's actions violated the intergovernmental tax immunity doctrine. The Oregon Supreme Court explicitly rejected the federal retirees' assertion and agreed instead with the lower court, which had held that "*Davis* does not hold, or even intimate that a state is prohibited from adjusting the compensation of its employees, either currently or retired, to make up for the loss of the [income tax] exemption." *Ragsdale*, 895 P.2d at 1356. Addressing precisely the same argument that Plaintiff makes in the current case, the Court declared: "The 1991 increase in compensation is not transformed into a tax rebate or tax benefit simply because it was motivated in whole or in part as a response to the *Davis* decision and the consequent removal of the tax exemption for [state] retirement benefits." *Id.* at 1354.

The Oregon Supreme Court gave several reasons why there was no discrimination against federal retirees: (1) there is no indication in *Davis* that the doctrine of intergovernmental tax immunity concerns itself with the level of compensation that a state pays its state retirees; (2) it would be illogical to suggest that there is anything in the underlying principle of intergovernmental tax immunity that would invalidate a state compensation plan in aspects unrelated to the level of taxation; (3) the legislative acts had conformed to the remedies set forth in *Davis*; (4) the increase in benefits is not part of the state's taxation; and (5) there is no correlation between state retirees' state tax obligations and the amount of increased retirement benefits to which they may be entitled. *Ragsdale*, 895 P.2d at 1354-55. Each of these reasons also

reinforces the view that South Carolina's Act 189 does not violate the doctrine of intergovernmental tax immunity.[4]

Ignoring the clear reasoning of *Ragsdale*, Plaintiff seeks the application of a later, but distinguishable, Oregon decision. *See Vogl v. Department of Revenue*, 960 P.2d 373 (Or. 1998). *Vogl* addressed a 1995 statute that increased retirement benefits to compensate for damages suffered by state retirees as a result of their benefits being subject to state personal income taxes. The Oregon Court ruled that the 1995 statute violated the intergovernmental tax immunity doctrine. In reaching this conclusion, the Court expressly preserved its holding and analysis in *Ragsdale*: "We emphasize that our holding necessarily is confined to the 1995 statute. *We do not overrule Ragsdale or its analysis of the 1991 law.*" *Vogl*, 960 P.2d at 383 (emphasis added). *Vogl* stated, "unlike the flat percentages employed by the 1991 statute, the 1995 statute increases benefits by way of a formula that is fairly closely matched to the task of replacing [state retirement] income that will be lost to taxes." *Vogl*, 960 P.2d. at 379. *Vogl* thus supports the State's position, rather than Plaintiff's, in the current case. South Carolina's Act 189 is distinguishable because Act 189 made no effort to tie increased benefits to individual tax circumstances, as was the case in Oregon. All state retirees' benefits in South Carolina were increased by 7%, regardless of the amount lost to taxes as a result of the elimination of the tax exemption. Thus, *Vogl* does not advance Plaintiff's argument that Act 189 violates *Davis*.

---

[4] In fact, South Carolina's Act 189 presents an even clearer case of constitutional validity. Oregon's statute, which was held to be constitutional, contained a provision declaring that increased state retirement benefits were not payable in any year in which the retirement benefits were exempt from personal income taxation. *Ragsdale*, 895 P.2d at 1358 (Gillete, J., dissenting). In other words, the distribution of the increased retirement benefits was conditioned upon the retirement benefits being taxed that year. South Carolina's Act 189 contains no such condition.

Plaintiff also erroneously relies upon a decision from Montana, *Sheehy v. Public Employees Retirement Division*, 864 P.2d 762 (Mont. 1993), which declared as violative of *Davis* a statute granting to state retirees who were Montana residents, and who were to be taxed, an annual retirement adjustment payment. The Montana Court found that the adjustment was not a legitimate retirement benefit because it was "provided not to all state retirees, but only to state retirees who are Montana residents." *Id.* at 769. "It is clear that the adjustment is not an actual and legitimate pension or retirement benefit. If it were a pension benefit, the State would have provided it to all of its retirees in recognition of their years of public service rather than just those living in Montana." *Id.* at 768. Unlike Montana's retirement benefit increase, South Carolina's is not just limited to state retirees living within the state, but applies to all South Carolina retirees, within and without the state. Thus, *Sheehy* actually supports the validity of South Carolina's Act 189.

In sum, the Court finds that the cases most analogous to the current case are *Almeter* and *Ragsdale*, which have directly rejected the same "tax rebate" argument that Plaintiff makes here. Accordingly, these authorities point to a finding of the constitutional validity of Act 189, in the same way as do the previously-discussed decisions of the United States Supreme Court and the South Carolina Supreme Court.[5]

III. Takings Claim

The State has also moved for summary judgment on Plaintiff's constitutional "takings" claim. Plaintiff asserted in

---

[5] In addition to all the aforementioned reasons pointing to the constitutionality of Act 189, the Tenth Amendment to the United States Constitution provides another. A finding that Act 189 is unconstitutional would raise serious questions as to the violation of the Tenth Amendment, which declares that the "powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States . . . ." U.S. Const. amend. X.

her complaint that the taxation of the retirement benefits of federal retirees constitutes a taking of private property for public use without just compensation, in violation of the federal and state constitutions. In response to the State's motion for summary judgment, Plaintiff has offered no opposition on the issue of takings. Thus, the Court deems Plaintiff to have abandoned this claim.

However, even had Plaintiff not abandoned her takings claim, it would still fail on the merits. It is clear that the State has "taken" nothing from Plaintiff or any other federal retiree. Plaintiff's argument is really that the State has not "given" her (a) an increase in retirement benefits, or (b) tax-free treatment on her federal retirement income. Obviously, she has no entitlement to the former, as she was not a state retiree; nor does she have any right to the latter, as it is axiomatic that the State has the power to tax its residents.

Case law from the United States Supreme Court, the South Carolina Supreme Court, and courts throughout the country makes clear that taxpayers have no vested interest in tax laws remaining unchanged: "Tax legislation is not a promise, and a taxpayer has no vested right in the Internal Revenue Code." *United States v. Carlton,* 512 U.S. 26, 33 (1994); *see Rivers v. State,* 327 S.C. 271, 490 S.E.2d 261 (1997). Second, "even though taxes . . . indisputably 'take' money from individuals or businesses, assessments of that kind are not treated as *per se* takings under the Fifth Amendment." *Branch v. United States*, 69 F.3d 1571, 1576 (Fed. Cir.1995); *A. Magnano v. Hamilton,* 292 U.S. 40 (1934) (taxing power of state or federal government not considered a taking under the Fifth or Fourteenth Amendment) (cited in *Rivers*, 327 S.C. at 275-76, 490 S.E.2d at 263). Because Plaintiff has no vested interest in the receipt of a tax refund, takings law is inapplicable, and, therefore, there is no valid takings claim. *See Rivers*, 327 S.C. at 276, 490 S.E.2d at 263 (rejecting taxpayers' takings claim).

IV. Equal Protection Claim

The State has also moved for summary judgment on Plaintiff's equal protection claim. Again, Plaintiff has offered no opposition to the State's motion in regard to this claim and has, therefore, abandoned it.

Even if the Court had to consider the merits of Plaintiff's equal protection cause of action, such a cause would collapse under minimal scrutiny. It is well-settled that there is no fundamental right to the equal payment of taxes, and federal retirees do not belong to a suspect or quasi-suspect classification. Thus, in order to withstand an equal protection challenge, legislation need only be rationally related to a legitimate governmental interest. *Ohio Bureau of Employment Servs. v. Hodory*, 431 U.S. 471 (1977). "It is inherent in the exercise of the power to tax that a state be free to select the subjects of taxation and to grant exemptions. Neither due process nor equal protection imposes upon a state any rigid rule of equality of taxation." *Carmichael v. Southern Coal & Coke Co.*, 301 U.S. 495, 509 (1937). So long as a distinction rests upon a rational basis, inequalities which result from singling out a particular class or classes for taxation or exemptions are not unconstitutional. *Id.*; *see Quirk v. Campbell*, 302 S.C. 148, 153, 394 S.E.2d 320, 323 (1990) (in rejecting plaintiff's equal protection challenge, the Court stated that it is "elementary that if the classification bears a reasonable relation to the legislative purpose sought to be effected, and if the constituents of each class are treated alike under similar circumstances and conditions, . . . equal protection . . . is fully complied with."). When a statute does not involve a fundamental interest or affect with particularity a protected class, it is presumed to be valid. *See Hodory*, 431 U.S. at 489; *Niemann v. Niemann*, 282 S.C. 127, 129, 317 S.E.2d 472, 474 (Ct. App. 1984) ("[T]he court will presume a legislative act is constitutionally valid unless a clear showing to the contrary is made.").

Here, Act 189 increased the retirement benefits of state retirees at the same time that their tax liability increased. Because Act 189 does not involve a fundamental interest, it is presumed to be valid. *See Hodory*, 431 U.S. at 489. Moreover, that presumption is not overcome inasmuch as the State had a rational basis for enacting Act 189. Persuading good employees to seek or keep State employment is a critical governmental objective, and offering competitive retirement benefits is a means to that end. South Carolina did that by increasing retirement benefits by 7%. Thus, it is clear that Act 189 is rationally related to a legitimate governmental purpose, and equal protection is not offended. *See Davis v. County of Greenville*, 313 S.C. 459, 443 S.E.2d 383 (1994) (holding that a county's practice of taxing all residents at a uniform rate while providing certain services only to particular areas did not violate the federal or state equal protection clause).

CONCLUSION

In sum, the Court finds that Plaintiff has failed to meet her burden of establishing the unconstitutionality of Act 189 "so clearly as to leave no room for reasonable doubt." *Thomason,* 342 S.C. at 86, 535 S.E.2d at 921. Accordingly, consistent with the authorities discussed above, the Court DENIES Plaintiff's motion for partial summary judgment and GRANTS the State's motion for summary judgment. The Court hereby expressly declares that Act 189 is constitutionally valid and does not violate the intergovernmental tax immunity doctrine or 4 U.S.C. § 111. Nor does Act 189 violate the takings clause or the equal protection clauses of the federal and state constitutions.

IT IS SO ORDERED.

/s/ L. CASEY MANNING
The Honorable L. Casey Manning
Circuit Judge, Fifth Judicial Circuit

Columbia, South Carolina
August 26, 2002

APPENDIX D

SOUTH CAROLINA LEGISLATURE
ACT 189, 1989 S.C. ACTS 623

* * * *

SECTION 39

TO AMEND SECTION 12-7-435, AS AMENDED, OF THE 1976 CODE, RELATING TO DEDUCTIONS FROM SOUTH CAROLINA TAXABLE INCOME FOR PURPOSES OF THE STATE INDIVIDUAL INCOME TAX, SO AS TO LIMIT TO THREE THOUSAND DOLLARS THE DEDUCTIONS OF AMOUNTS RECEIVED FROM THE VARIOUS STATE RETIREMENT SYSTEMS, OTHER SOUTH CAROLINA POLICE OR FIREFIGHTER COUNTY OR MUNICIPAL RETIREMENT SYSTEMS, AND RETIREMENT SYSTEMS OF OTHER STATES; TO AMEND SECTIONS 9-1-1680, AS AMENDED, 9-8-190, 9-9-180, AND 9-11-270, RELATING TO THE TAX EXEMPTION ALLOWED RETIREMENT BENEFITS OF THE VARIOUS STATE RETIREMENT SYSTEMS, SO AS TO DELETE THE EXEMPTIONS FROM THE STATE INDIVIDUAL INCOME TAX AND THE SOUTH CAROLINA ESTATE TAX; AND TO REPEAL SECTION 12-7-565 RELATING TO RECIPROCAL AGREEMENTS WITH OTHER STATES ON THE TAXING OF RETIREMENT BENEFITS.

A. Item (d) of Section 12-7-435 of the 1976 Code is amended to read:

> "(d) The first three thousand dollars of the total amount received by a taxpayer from the various state retirement systems as provided in Title 9 and from the retirement systems of other states."

B. Item (e) of Section 12-7-435, as amended by Section 25E, Part II, Act 170 of 1987, is further amended to read:

"(e) The first three thousand dollars of retirement pay received by police officers or firemen from a South Carolina municipality or county group retirement plan."

C. Section 9-1-1680 of the 1976 Code, as amended by Act 297 of 1988, is further amended to read:

"Section 9-1-1680. The right of a person to an annuity or a retirement allowance or to the return of contributions, an annuity, or retirement allowance itself, any optional benefit, or any other right accrued or accruing to any person under the provisions of this chapter, and the monies of the system created under the provisions of this chapter or any private retirement system operated by a municipality, are exempted from any state or municipal tax, except the taxes imposed pursuant to Chapters 7, 15, and 16 of Title 12, and exempted from levy and sale, garnishment, attachment, or any other process and are unassignable except as specifically otherwise provided in this chapter."

D. Section 9-8-190 of the 1976 Code is amended to read:

"Section 9-8-190. The right of a person to a retirement allowance or to the return of contributions, a retirement allowance itself, any optional allowance or payment on death or any other right accrued or accruing to any person under the provisions of this chapter, and the monies of the system are exempted from state or municipal tax, except the taxes imposed pursuant to Chapters 7, 15, and 16 of Title 12, and exempted from levy and sale, garnishment, attachment, or any other process and are unassignable except as otherwise provided in this chapter."

E. Section 9-9-180 of the 1976 Code is amended to read:

"Section 9-9-180. The right of a person to a retirement allowance or to the return of contributions, a retirement allowance itself, any optional allowance or payment on

death or any other right accrued or accruing to any person under the provisions of this chapter, and the monies of the system are exempted from any state or municipal tax, except the taxes imposed pursuant to Chapters 7, 15, and 16 of Title 12, and exempted from levy and sale, garnishment, attachment, or any other process and are unassignable except as specifically otherwise provided in this chapter."

F. Section 9-11-270 of the 1976 Code is amended to read:

"Section 9-11-270. The right of a person to retirement allowance or to the return of contributions, a retirement allowance itself, any optional or death benefit, or any other right accrued or accruing to a person under the provisions of this chapter, and the monies of the system are exempted from any state or municipal tax, except the taxes imposed pursuant to Chapters 7, 15, and 16 of Title 12, and exempted from levy and sale, garnishment, attachment, or any other process, and are unassignable except as specifically otherwise provided in this chapter."

G. Section 12-7-565 of the 1976 Code is repealed.

H. This section is effective for taxable years beginning after 1988 and with respect to estates of decedents dying after 1988.

* * * *

SECTION 60

TO AMEND SECTIONS 9-1-1220, 9-1-1550, AS AMENDED, AND 9-1-1767 OF THE 1976 CODE, RELATING TO THE SOUTH CAROLINA RETIREMENT SYSTEM, SO AS TO INCREASE EMPLOYER CONTRIBUTIONS BY FIFTY-FIVE HUNDREDTHS OF ONE PERCENT, TO INCREASE THE MULTIPLIER FRACTION USED IN CALCULATING SERVICE RETIREMENT BENEFITS FROM ONE AND THIRTY-FIVE HUNDREDTHS PER-

CENT TO ONE AND FORTY-FIVE HUNDREDTHS PERCENT OF AVERAGE FINAL COMPENSATION FOR CLASS ONE MEMBERS AND FROM ONE AND SEVENTENTHS PERCENT TO ONE AND EIGHTY-TWO HUNDREDTHS PERCENT OF AVERAGE FINAL COMPENSATION FOR CLASS TWO MEMBERS, TO INCREASE THE BENEFITS PAYABLE DUE TO RETIREMENT BEFORE JULY 1, 1989, BY SEVEN PERCENT EFFECTIVE ON THAT DATE; TO AMEND SECTION 9-8-60, RELATING TO THE RETIREMENT SYSTEM FOR JUDGES AND SOLICITORS, SO AS TO INCREASE THE MONTHLY RETIREMENT BENEFIT; TO AMEND SECTION 9-9-60, RELATING TO THE RETIREMENT SYSTEM FOR MEMBERS OF THE GENERAL ASSEMBLY, SO AS TO INCREASE THE MONTHLY RETIREMENT BENEFIT; TO AMEND SECTIONS 9-11-60, AS AMENDED, AND 9-11-300, AS AMENDED, RELATING TO THE SOUTH CAROLINA POLICE OFFICERS RETIREMENT SYSTEM, SO AS TO INCREASE THE MULTIPLIER USED IN CALCULATING SERVICE RETIREMENT MONTHLY BENEFITS OF CLASS ONE MEMBERS FROM TEN DOLLARS AND TWENTY-FIVE CENTS FOR EACH YEAR OF SERVICE TO TEN DOLLARS AND NINETY-SEVEN CENTS AND TO INCREASE THE MULTIPLIER USED IN CALCULATING MONTHLY SERVICE RETIREMENT BENEFITS OF CLASS TWO MEMBERS FROM TWO PERCENT TO TWO AND FOURTEEN HUNDREDTHS PERCENT OF AVERAGE FINAL COMPENSATION, AND TO INCREASE THE BENEFITS PAYABLE DUE TO RETIREMENT BEFORE JULY 1, 1989, BY SEVEN PERCENT EFFECTIVE ON THAT DATE, AND TO PROVIDE THAT NO INTEREST OR PENALTIES MAY BE ASSESSED ON UNDERPAYMENTS OF ESTIMATED STATE INDIVIDUAL INCOME TAXES DUE FOR TAXABLE YEAR 1989 OCCURRING BECAUSE OF THE DELETION OF THE STATE INCOME TAX EXEMPTION OF STATE RETIREMENT BENEFITS.

A. Section 9-1-1220 of the 1976 Code is amended by adding at the end:

> "Effective July 1, 1989, the State Budget and Control Board shall increase the employer contribution rate for the South Carolina Retirement System by fifty-five hundredths of one percent."

B. Section 9-1-1550(A)(3) and (B) of the 1976 Code, as amended by Act 475 of 1988, are further amended to read:

> "(3) If he has a prior service certificate in full force and effect, an additional employer annuity which must be equal to the employee annuity which would have been provided at age sixty-five or at age of retirement, whichever is less, by twice the contributions which he would have made during his entire period of prior service had the System been in operation and had he contributed thereunder during such entire period. Upon retirement from service on or after July 1, 1989, a Class One member shall receive a service retirement allowance computed as follows: If the member's service retirement date occurs on or after his sixty-fifth birthday, or after he has completed thirty or more years of creditable service, the allowance must be equal to one and forty-five hundredths percent of his average final compensation multiplied by the number of years of his creditable service. If the member's service retirement date occurs before his sixty-fifth birthday and before he completes thirty years of creditable service, his service retirement allowance is computed as above, but is reduced by five-twelfths of one percent thereof for each month by which his retirement date precedes the first day of the month, prorated for periods less than a month, coincident with or next following his sixty-fifth birthday. Notwithstanding the foregoing provisions, any Class One member who retires on or subsequent to July 1, 1976, shall receive not less than the benefit provided under the formula in effect before July 1, 1976.

(B) Upon retirement from service on or after July 1, 1989, a Class Two member shall receive a service retirement allowance computed as follows:

(1) If the member's service retirement date occurs on or after his sixty-fifth birthday or after he has completed thirty or more years of creditable service, the allowance must be equal to one and eighty-two hundredths percent of his average final compensation, multiplied by the number of years of his creditable service.

(2) If the member's service retirement date occurs before his sixty-fifth birthday and before he completes the thirty years of creditable service, his service retirement allowance is computed as in item (1) above but is reduced by five-twelfths of one percent thereof for each month, prorated for periods less than a month, by which his retirement date precedes the first day of the month coincident with or next following his sixty-fifth birthday.

(3) Notwithstanding the foregoing provisions, a Class Two member whose creditable service began before July 1, 1964, shall receive not less than the benefit provided by subsection (A) of this section."

C. Section 9-1-1767 of the 1976 Code, as added by Act 475 of 1988, is amended by adding at the end:

"Effective July 1, 1989, the benefits payable due to retirement before July 1, 1989, must be increased by seven percent."

D. Section 9-8-60(2) of the 1976 Code is amended to read:

"(2) A retired member shall receive a monthly retirement allowance which is equal to one-twelfth of seventy-one and three-tenths percent of the current active salary of the respective position."

E. Section 9-9-60(2) of the 1976 Code is amended to read:

"(2) Effective July 1, 1989, a retired member shall receive a monthly retirement allowance which is equal to one-twelfth of four and eighty-two hundredths percent of earnable compensation multiplied by the number of years of his credited service prorated for periods less than a year."

F. Section 9-11-60(2) of the 1976 Code, as amended by Act 424 of 1988, is further amended to read:

"(2) Upon service retirement on or after July 1, 1989, the member shall receive a service retirement allowance which is equal to the sum of (a), (b), and (c) below:

(a) a monthly retirement allowance equal to ten dollars and ninety-seven cents multiplied by the number of years of his Class One service;

(b) a monthly retirement allowance equal to one-twelfth of two and fourteen hundredths percent of his average final compensation multiplied by the number of years of his Class Two service;

(c) an additional monthly retirement allowance which is the actuarial equivalent of the member's accumulated additional contributions.

The sum of the retirement allowances computed under (a) and (b) above may not be less than the allowance which would have been provided under (a) if all of the member's credited service were Class One service. For a police officer who became a member before July 1, 1974, and who was a participant in the Supplemental Allowance Program, the portion of his service retirement allowance not provided by his accumulated contributions may not be less than it would have been if the provisions of the System in effect on June 30, 1974, had continued in effect until his date of retirement."

G. Section 9-11-300 of the 1976 Code, as amended by Act 424 of 1988, is further amended by adding at the end:

"Benefits payable due to retirement before July 1, 1989, must be increased by seven percent effective July 1, 1989."

H. No taxpayer receiving benefits from the various state retirement systems provided in Title 9 of the 1976 Code may be assessed penalties or interest on underpayments of estimated individual income taxes for the 1989 taxable year occurring as a result of the elimination of the total exemption of those benefits from the South Carolina individual income tax.

I. This section takes effect July 1, 1989.

* * * *